

[J-257-1999]
IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 122 M.D. Appeal Docket 1999
	:	
Appellant	:	Appeal from the Order of Superior Court
	:	entered March 3, 1999 at No. 1474PHL98
	:	which affirmed in part and vacated in part
v.	:	the judgment of sentence imposed
	:	February 24, 1998 and remanded for
	:	resentencing to the Court of Common
EDDIE VASQUEZ,	:	Pleas of Monroe County, Criminal Division
	:	at No. 702CR97.
	:	
Appellee	:	726 A.2d 396 (Pa. Super. 1999)
	:	
	:	ARGUED: November 17, 1999
	:	

CONCURRING OPINION

MR. JUSTICE CAPPY

DECIDED: June 20, 2000

I join in the opinion of the majority. I write separately to address the dissenting opinion.

I concur with the dissent when it expresses dissatisfaction with the sentencing enhancement provisions at 18 Pa.C.S. §7508. Like the dissent, I believe that the legislative enactment at issue ignores the recidivist philosophy of sentencing in favor of a mechanical application of enhanced penalties, which serves merely to add increased jail time at the whim of the prosecuting authority. As a jurist, I believe sentencing is an individualized procedure wherein the sentencing judge must balance multiple factors before imposing sentence on the defendant, which reflect the nature of the crime, its impact on the

community, the particular victim, and the degree of culpability of the defendant. That is why I, like most jurists, advance the recidivist philosophy, as it best reflects the need for focusing on the individual defendant's capability for rehabilitation when imposing sentence.

However, I am compelled to recognize that the legislature in its infinite wisdom has the authority to enact sentencing schemes that reflect penal philosophies other than the recidivist philosophy. As this court acknowledged in Commonwealth v. Williams, 652 A.2d 283, 285 n. 1 (Pa. 1994), there are other purposes to sentencing beyond individual deterrence and rehabilitation. Other recognized goals of sentencing include protection of society, general deterrence of criminal activity, and retribution. Id. In Williams, we examined the same statutory section at issue in this case, and found that the legislature left no ambiguity as to the clear intent to impose a mandatory enhancement without consideration of the recidivist philosophy. The dissent attempts to distinguish the holding in Williams by focusing on the distinct procedural postures of the two cases. In Williams, the defendant was arrested and indicted separately for two drug sales. He pled to both indictments on the same day and was sentenced on the same day. In the instant case, the defendant was charged in one indictment for four distinct drug sales occurring on different dates. I cannot agree that these distinctions impact the outcome regarding the application of the enhancement provision. The differences between these two cases are immaterial to discerning the nature of the penal provision at issue.

Accordingly, although I find the position of the dissent to be philosophically compelling, for the reasons stated herein, I am constrained to join the majority.